

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eugene A. Helmetsie
Serial Number: 10/774,339
Filed: February 6, 2004
Group Art Unit: 3751
Examiner: Le, Huyen D
Title: Configurable Modular Shower Surround Features
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL REPLY BRIEF

Dear Sir:

In response to the Office Communication concerning this Application or Proceeding, dated April 25, 2011, the Applicant makes the following remarks.

REMARKS

In the introductory statement the Examiner claims that the intended use does not impose any structural limitations on the claims to make them distinguishable over the device of Armstrong, “which is capable of being used in a bathroom or shower surround.” However, in responding to the Examiner’s rejections in the first Appeal before the Board on September 28, 2009, on page 19 thereof, the Board stated:

“we fail to see how one of ordinary skill in the art would consider screw holes covered by a shelf to be a blind opening, and are persuaded that one of ordinary skill in the art would not use the screw holes of Randall in the manner suggested by the Examiner because of the potential for water intrusion.”

Please note that as stated in the Applicant's Reply Brief that Armstrong is built the same way as Randall and has the same screw holes as Randall. The Examiner here is impermissibly trying to get "a second bite at the apple" by rejecting the claims over Armstrong, which has the same structure as Randall. Therefore, Armstrong does not show "blind openings" as claimed in claim 18 and is not capable of being used in the bathroom or shower surround. The Examiner's rejection must be reversed and this case be passed to issue and such action is respectfully requested.

Respectfully submitted,

/Lloyd D. Doigan /

Lloyd D. Doigan, Reg. No. 30,170
Carlson, Gaskey & Olds
400 W. Maple Road, Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: May 12, 2011